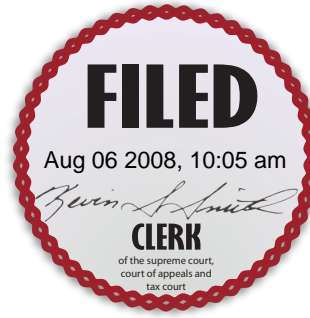


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

BRIAN J. MAY
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

ELLEN H. MEILAENDER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

HELEN C. YOUNG,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)

No. 71A03-0805-CR-237

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable R.W. Chamblee, Jr., Judge
Cause No. 71D01-0710-FA-1

AUGUST 6, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Helen C. Young (“Young”) appeals from her conviction after a bench trial of burglary, a Class A felony.

We affirm.

ISSUE

Young presents the following issue for our review: Whether there was sufficient evidence of bodily injury to sustain Young’s conviction of burglary as a Class A felony.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the conviction reveal that Young previously was employed by a house cleaning service. In 1996, Young did cleaning work in Jeanne Denham’s home in St. Joseph County, Indiana, on two occasions. On December 7, 2006, Young approached the door of Denham’s neighbor and spoke to the nanny there. Young asked the nanny about a couple she used to work for who she thought lived next door, meaning at Denham’s house. By then Denham was an eighty-five year old widow, who wore a hearing aid and lived alone. The nanny became uncomfortable after answering some questions and terminated the conversation with Young.

On the evening of December 8, 2006, Young approached Denham’s house and rang the doorbell. Denham was on the telephone with a friend as Young opened the screen door and pushed her way through a door against which Denham was pushing back. Denham had not invited Young into her house. Once Young was inside, she and

Denham struggled causing Denham pain in her arm. In addition, Denham lost her glasses and hearing aid, and her clothes were ripped.

Denham yelled to her friend, who was still on the telephone, to call the police. Young grabbed the telephone, pulled it out of the wall, and threw it on the floor. Young tried to hit Denham's head against a wall, and pushed her down the hallway into a bathroom. Young unsuccessfully tried to prop a chair under the doorknob to confine Denham to the bathroom. When the bathroom doorknob fell off, Young attempted to push Denham's head into the toilet. Denham escaped and pressed her alarm bell to summon the police. Young left Denham's house before the police arrived.

South Bend Police Officer Chris Krueger responded to the alarm at Denham's house. He observed the telephone in pieces on the floor, a chair in the hall, and that the victim's clothing was torn. Officer Krueger helped Denham locate her glasses and hearing aid. In the course of that search, Officer Krueger and Denham discovered that Denham's purses were not where they were usually kept. Although Denham refused an ambulance, she was moving her left shoulder around. Later, Denham was able to identify Young from a photo array as the person who entered her home.

On January 4, 2007, the State charged Young with burglary resulting in bodily injury, a Class A felony. The matter was initially set for trial to occur on July 23, 2007. However, the trial judge recused herself from the case and named a panel of judges. A new judge was selected and the matter was set for trial on October 29, 2007. The parties were unable to select a jury, so the matter was reset for trial on December 3, 2007. On December 4, 2007, a mistrial was declared because the jury could not reach a unanimous

verdict. On January 7, 2008, Young waived her right to a jury trial, and a bench trial was set for January 17, 2008. The trial court found Young guilty of burglary as a Class A felony. On February 20, 2008, the trial court imposed a fifty-year sentence with ten years suspended.

DISCUSSION AND DECISION

Young is challenging the sufficiency of the evidence of bodily injury of the victim during the burglary. When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the conviction. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. *Id.* Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id.* at 147.

Bodily injury to any person other than a defendant during the commission of a burglary elevates the offense to a Class A felony. Ind. Code §35-43-2-1. Bodily injury is defined by statute as any impairment of physical condition, including physical pain. Ind. Code §35-41-1-4.

In an effort to support her challenge, Young points out conflicting testimony at trial that Denham initially told police that she was not injured and declined medical attention at the scene. At trial, Denham also described having hurt feelings.

However, Denham testified that she felt pain in her arm during her struggle with Young. She testified that she declined medical attention at the scene for her pain, because “[d]octor’s wives do not go to hospitals. It’s just something you don’t do.” Tr. at 47. On cross-examination, Denham testified that she probably told the officer that she was “fine” because she “wasn’t hurt badly,” and her “arm hurt, but it wasn’t killing” her. Tr. at 56. Officer Krueger testified that he observed Denham “kind of moving her left shoulder around,” even though Denham refused an ambulance. Tr. at 65.

This was a bench trial. The trial judge, when finding Young guilty of Burglary as a Class A felony stated in relevant part as follows:

I’m going to find, Ms. Young, that you’re guilty of the burglary, and I’m going to find that the burglary is a burglary resulting in bodily injury. I recognize the distinction you’re making, Mr. May. In weighing the lady’s credibility on the witness stand as far as the injury is concerned, if I got hit in the head with a 2x4 and somebody said, are you alright, I probably would say, I’m fine too because I’m hard-headed and that doesn’t mean I didn’t have a splitting headache from getting hit by the 2x4. She did clearly testify that her arm—that her arm hurt, but it wasn’t enough—I think she said in response to somebody, but it wasn’t going to kill me or words to that affect [sic]. If the statute says bodily injury includes pain, I think this qualifies.

Tr. at 90-91.

Although Young is correct about Denham’s conflicting testimony on the issue of bodily injury, that evidence was for the trial judge as fact-finder to evaluate. The trial judge’s statement cited above shows a careful reflection of the testimony on that issue

and his assessment of Denham's credibility. The trial judge was in a better position to make that determination. We will not reweigh the evidence. The evidence of bodily injury was sufficient to support Young's conviction.

CONCLUSION

The evidence of bodily injury was sufficient to support Young's conviction of burglary as a Class A felony.

Affirmed.

RILEY, J., and NAJAM, J., concur.